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IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 1010

WARDEN, MARYLAND PENITENTIARY,
Petitioner,

v.

JOHN FRANK LEDBETTER, JR.,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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The Warden of the Maryland Penitentiary, by Francis B. Burch, Attorney General of Maryland, and R. Randolph Victor, prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Fourth Circuit entered on September 22, 1966. The case was argued before the Court sitting *En Banc* on January 5, 1966.

CITATIONS TO OPINIONS BELOW

The majority and dissenting opinions of the Circuit Court of Appeals are printed in the Appendix, hereto, *infra*, pages 1a-15a, and are reported in *Ledbetter v. Warden*, 368 F. 2d 490 (4th Cir., 1966).

The opinion of the United States District Court for the District of Maryland which was affirmed by the majority

opinion of the Circuit Court of Appeals is printed in the Appendix hereto, *infra*, pages 17a-24a. The opinion is reported in *Ledbetter v. Warden*, 239 F. Supp. 369 (D.C. Md., 1965).

JURISDICTION

As aforementioned, the judgment of the Circuit Court of Appeals was entered on September 22, 1966 (Apx. 16a). A judgment in lieu of mandate was issued to the District Court for the District of Maryland on October 25, 1966. It thereafter became necessary to file in this Court an Application for Extension of Time for Filing Petition for Writ of Certiorari. On December 22, 1966 an Order was signed extending the time for the filing of the within Petition to and including January 27, 1967. A Petition to Recall and Stay the Mandate of the Court of Appeals was filed in that Court on or about the 7th day of January, 1967, and the judgment in lieu of Mandate was recalled in an Order filed on January 10, 1967. It was further ordered that the Mandate be stayed pending this application for a Writ of Certiorari. The jurisdiction of this Court is invoked under 28 U.S.C. Section 1254 (1).

QUESTIONS PRESENTED

1. Were the incriminating oral admissions and the signed statement of John Frank Ledbetter, Jr., the Respondent herein, made freely and voluntarily, and therefore properly admissible as evidence at his trial for murder in the first degree in the Criminal Court of Baltimore, Maryland in 1960?

2. Assuming that they were not, did the Respondent's experienced trial counsel's failure to object to the introduction of the evidence in question waive his rights to later question the admissibility thereof?

CONSTITUTIONAL PROVISION INVOLVED

Amendment XIV to the Constitution of the United States:

> "All persons born or naturalized in the United States and subject to the Jurisdiction thereof, are Citizens of the United States and of the States wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

By a three to two decision, the United States Court of Appeals for the Fourth Circuit affirmed a decision of the United States District Court for the District of Maryland and held, as did the District Court, that the signed statement given by Mr. Ledbetter to the Police Officers who were interrogating him and certain oral admissions made by him soon after his arrest, and testified to at his trial by Officer Moser, must be considered to have been involuntary or coerced by the totality of the circumstances; and were therefore obtained in violation of his due process rights. The Court of Appeals also agreed with the District Court's finding as to the question of waiver and stated that:

> "We also agree that trial counsel's failure to object to the admission of the written confession and oral statement did not forfeit Ledbetter's right to challenge his conviction by federal habeas corpus." (368 F. 2d at page 493 and Apx. 5a).

The dissenting opinion written by Judge Albert V. Bryan, joined therein by Chief Judge Clement F. Haynsworth, Jr. held that the oral admissions and signed confession were not in fact involuntary, and there was therefor no reason for Mr. Ledbetter's trial counsel to object to the evidence relating to his statements.

The facts relevant to a decision by this Court on this Petition for a Writ of Certiorari are as follows:

John Frank Ledbetter, Jr., the Respondent herein, was found guilty of murder in the first degree by a Jury in the Criminal Court of Baltimore on February 24, 1960. He had been charged along with three other defendants under two separate indictments for the murder and robbery of Lawrence North at Baltimore and Smallwood Streets in Baltimore, Maryland, on August 7, 1959. As aforementioned, the Jury found him guilty on the murder indictment but he was found not guilty of robbery. He was sentenced to life imprisonment. After the denial of a motion for a new trial, an appeal was filed in the Court of Appeals of Maryland where the judgment and sentence were affirmed. *Ledbetter v. State,* 224 Md. 271, 167 A. 2d 596 (1961). The questions there raised related to the sufficiency of the evidence and claimed inconsistency in the verdict of the Jury. The opinion of the Court of Appeals of Maryland is printed in the Appendix hereto, *infra,* pages 26a-29a.

Subsequently, a Petition for Writ of Habeas Corpus was filed in the United States District Court for the District of Maryland. This Petition was denied for failure to pursue available State remedies under the Maryland Post Conviction Procedure Act, Article 27, Sections 645A-645J Annotated Code of Maryland (1964 Cummulative Supplement now 1966 Cummulative Supplement). In compliance with the District Court's Order, a Petition was filed under the Act in the Criminal Court of Baltimore, which was denied, as was an application for leave to appeal from the lower court's order filed in the Court of Appeals of Maryland. *Ledbetter v. Warden,* 234 Md. 643, 200 A. 2d 81 (1964) and printed in the Appendix hereto, *infra,* pages 30a-32a.

Thereupon, a second Petition for Writ of Habeas Corpus was filed in the District Court and the Respondent was granted a hearing on the allegations raised therein. The District Court, as evidenced by its opinion filed in the proceedings and included in the Appendix hereto found that all of the allegations were without merit with the exception of one. As set forth above, the Court found that the oral admissions of guilt made by the Respondent soon after his arrest and his signed statement were involuntary or coerced by the totality of the circumstances; and that, therefore, the admission into evidence of Officer Moser's testimony relating to the admissions made to him and the use of the signed statement deprived the Respondent of a constitutional right guaranteed by the Fourteenth Amendment. The Court further found that the Respondent did not knowingly waive his rights, even though there were no objections entered at the time that the evidence was introduced.

At the habeas hearing, Mr. Ledbetter testified that he was nineteen years old at the time of his arrest at Wilson's Restaurant in Baltimore, Maryland, where he was employed, and that he had completed the eighth grade in school. He was arrested on Tuesday, August 11, 1959, at approximately 3:00 p.m., although subsequent testimony established that he was arrested at approximately 4:00 p.m. He was taken directly to Southwestern District Police Station where he was told he had been arrested for questioning about the murder and robbery of Mr. North. He was placed in a room with three police officers where he remained for 25 or 30 minutes. Mr. Ledbetter's testimony relating to his chain of custody from the time of his arrival at the station at approximately 5:00 p.m. until he was taken to Sergeant Kendrick for interrogation at approximately 8:00 p.m., was somewhat confusing. However, he testified

that at no time was he advised of any of his rights or that he was entitled to a lawyer. He further testified that he requested permission to make a telephone call which was denied. The reason for his request, as he explained, was that he wanted to call his family for assistance. He alleged that upon the denial of his request he was questioned about his whereabouts on the date of the incident in question. He further asserted that another request to make a telephone call was submitted to the Sergeant who took his statement, and was likewise denied. However, the review of his testimony establishes that he only alleged one such request during his first two hours at the Police Station. He also charged that an Officer who had him in custody during this period threatened to shoot him if he ran. In addition to this, he claimed that he requested to see his cousin, Geraldine, who had been brought to the station before his arrival. The apparent reason for her presence there was that one of the other participants in the crime had attempted to establish an alibi by claiming that he had been out with her at the time that the offense was committed. Mr. Ledbetter stated that his only reason for wanting to see her was to ask her why she had been brought there.

Subsequently, Mr. Ledbetter was taken to Sergeant Kendrick who asked him to give a statement. He disclosed that Jerry Dennis' statement was shown to him and that Taylor, another participant, was brought into the room. At this point the Sergeant began questioning him and his answers were typed by one of the officers present. He admitted that he was not threatened in any way. At this point in his testimony, he again claimed that before the statement was begun he asked to call his family. He did not deny signing the statement, but he maintained he did not read it.

On cross-examination, he explained that he advised his lawyer that he had signed the statement. His past record consisted of operating a motor vehicle while under the influence of alcohol and of possessing alcohol while a minor. He had been in police custody for the latter offense.

The attorney who represented Mr. Ledbetter at his trial having been retained by his family to do so, explained that he learned of the oral admissions made to Officer Moser on the morning of the trial. He did, however, have prior knowledge of the signed statement.

Relative to the confession, Sergeant Albert Kendrick testified that his first contact with Mr. Ledbetter occurred at approximately 8:05 p.m. on August 11th when he was brought to him in the interrogation room on the second floor of the Police Station. When he was brought into the room he was introduced to everyone present, after which he was shown the statement previously given by Jerry Dennis. He disclosed that Mr. Ledbetter was in agreement with the contents of Dennis' statement, including the part revealing that there was a prearranged plan to rob Mr. North. He was then asked if he wanted to make a statement of his own and he consented. Sergeant Kendrick explained that during the one-half hour interval prior to the commencing of Mr. Ledbetter's statement, the statements given by Jerry Dennis were reviewed orally with him and that the facts therein were verified by him. He described Ledbetter's statement produced at the hearing as ". . . the accurate word for word document that was typewritten as it happened". The witness stated that he did not specifically advise Ledbetter that anything he said would be used against him or that he was entitled to a lawyer, or that he did not have to say anything at all. However, at the time that the statement was taken, as evidenced by the statement itself, Mr. Ledbetter was told

that "No one is going to threaten you or make you any promises and anything you say must be of your own free will. Will you tell us in your own words what you know about the above incident?". After the statement was completed he read it and signed it in the presence of the witnesses. The witness denied that Mr. Ledbetter requested permission to make a telephone call during this period. Concerning the alleged request testified to by the Respondent, the Sergeant explained that because he was the ranking officer on the case any request to call anyone would have to be referred to him for his approval. No such request was made by Mr. Ledbetter or by anyone else associated with him during his period of detention prior to the making of the statement. Furthermore, during the making of the statement Mr. Ledbetter did not request an attorney nor in the witness's opinion, did he seem concerned that he was making a statement in the absence of one.

Officer Charles Moser, who participated in Mr. Ledbetter's arrest, testified that he had been placed in his custody soon after his arrest by Sergeant Donahue. No one else was in the room with the two men. Mr. Ledbetter remained with him until Sergeant Kendrick sent for him for questioning. He stated that during the time that Mr. Ledbetter was in his custody they spoke about general topics and finally they began to discuss the attack on Mr. North. The information given by him relative to the offense was volunteered. The witness could not remember whether a specific request was made to him for permission to make a telephone call, but if there had been such a request, he would have contacted his superior officer, which he did not have occasion to do. He said that in his experience at the Southwestern Police Station no such request had ever been refused. Officer Moser explained that he did not induce any of the incriminating statements made by Mr.

Ledbetter because he did not have the authority to ask any questions, and therefore he did not do so. However, he did make notes of what was said. He did not give Mr. Ledbetter any advice because, as he stated, he was not conducting an investigation.

Sergeant John Donahue, also present when Mr. Ledbetter was arrested, testified that when he was taken to the Police Station and booked, the Desk Sergeant was told that Ledbetter was being held for investigation. At that time no charges were placed against him. The witness could not recall whether there had been a request to make a telephone call while they were proceeding to the station. He was certain, however, that after their arrival, he heard no such request. This witness had no further contact with Mr. Ledbetter until the signed statement was given to Sergeant Kendrick. Proceeding on with his testimony, Sergeant Donahue disclosed that when Mr. Ledbetter was brought into the room and shown Dennis' statement, he replied ". . . that's true". He further explained that if a request to make a telephone call had been made at this point, the request would have been granted, even while the statement was in progress.

Detective William Rawlings, one of the witnesses to the statement, testified that his first contact with Mr. Ledbetter occurred during the conversation prior to the commencing of the statement. He recalled that Officer Moser had advised them that Mr. Ledbetter had made certain admissions to him and, at the time, Mr. Ledbetter acknowledged this. Detective Rawlings was present during the entire time that the Respondent was in the room. To his knowledge there was no request to make a telephone call. Mr. Ledbetter made no complaints, he was not threatened, and no promises were made to him. In the witness's opinion, the statement was given voluntarily.

At the conclusion of the hearing granted on Mr. Ledbetter's Petition for a Writ of Habeas Corpus, and the argument of counsel, the District Court ordered that Mr. Ledbetter be released unless the State of Maryland entered an appeal or elected to retry him. (Apx. 24a-25a). An appeal was then filed from the aforementioned ruling of the District Court on behalf of the Warden of the Maryland Penitentiary in the United States Court of Appeals for the Fourth Circuit. That Court found that the judgment of the District Court must be affirmed because of the applicability of the principles enunciated by this Court in the cases of *Haynes v. Washington*, 373 U.S. 503, 10 L. Ed. 2d 513, 83 S. Ct. 1336 (1963) reaffirmed in *Davis v. North Carolina*, 384 U.S. 737, 16 L. Ed. 2d 895, 86 S. Ct. 1761 (1966). The Court stated that its conclusion was not impaired by the recent decision of this Court in *Johnson v. New Jersey*, 384 U.S. 719, 16 L. Ed. 2d 882, 86 S. Ct. 1772 (1966).

REASONS FOR GRANTING THE WRIT

Your Petitioner believes that the following reasons for granting a Writ of Certiorari exist in the instant case.

Your Petitioner will discuss separately each of the following reasons for granting same.

1. The facts and circumstances surrounding the making of the oral admissions and the signed statement by Mr. Ledbetter shortly after his apprehension at his place of employment do not substantiate a finding that they were involuntary or coerced by the totality of the circumstances.

2. The decisions of this Court relied upon by the majority in support of the Opinion filed in these proceedings in the United States Court of Appeals for the Fourth Circuit do not enunciate the standards to be applied in determining the voluntariness of Mr. Ledbetter's oral admissions and

his signed statement at the time of the making thereof, and at the time of their admission into evidence, therefore, the evidence in question was properly admissible at the time of his trial.

Your Petitioner has set forth as a second question presented the issue of whether or not experienced trial counsel's failure to object to the introduction of the evidence in question waived the Respondent's right to later question their admissibility. This issue will not be discussed further in this Petition for Writ of Certiorari since the Petitioner merely wishes to preserve it in the event that this Court sees fit to grant the Writ of Certiorari for any other reason set forth herein. Assuming that this Court agrees with the findings of the Courts below that the oral admissions and the signed statement were involuntarily made, your Petitioner believes that the fact that there was a deliberate waiver as a part of trial tactics will be fully evident from the record in this case.

I.

THE FACTS AND CIRCUMSTANCES SURROUNDING THE MAKING OF THE ORAL ADMISSIONS AND THE SIGNED STATEMENT AS REVEALED BY THE RECORD DO NOT SUBSTANTIATE A FINDING THAT THEY WERE INVOLUNTARY OR COERCED.

Your Petitioner has contended from the outset that the oral admissions made by the Respondent herein and his signed statement given thereafter were voluntary and that the testimony of Officer Moser relating to the admissions and the use of the Respondent's confession at his trial were not a deprivation of a constitutional right guaranteed to him by the Fourteenth Amendment.

As aforementioned, the District Court found otherwise and cited as authority in support of its finding the cases of *Haynes v. Washington, supra; Escobedo v. Illinois,* 378 U.S.

478, 12 L. Ed. 2d 977 (1964); *Jackson v. Denno*, 378 U.S. 368, 12 L. Ed. 2d 908, 84 S. Ct. 1774 (1964), 1 A.L.R. 3d 1205. The Court further cited *Miller v. Warden*, 338 F. 2d 201 (4th Cir., 1964); *Thiess v. State*, 235 Md. 541, 201 A. 2d 790 (1964); and *Culombe v. Connecticut*, 367 U.S. 568, 6 L. Ed. 2d 1037, 81 S. Ct. 1860 (1961).

In affirming the judgment of the District Court, the United States Court of Appeals for the Fourth Circuit relied primarily upon the decisions of this Court in *Haynes v. Washington, supra; Davis v. North Carolina, supra,* and the decision of that Court in *Miller v. Warden, supra.* In so doing, the majority of the Court stated that:

> "We agree with the District Court that from the totality of circumstances, Ledbetter's confessions were obtained in violation of his due process rights. This youth was alone in the hands of the police, and his requests to contact his family were refused. He was not told of his right to maintain silence, or that his statements might be used against him. And he was not informed of his right to an attorney. Considered against the background of Ledbetter's age and education we think the District Court correctly found that the confessions were not voluntarily given." (368 F. 2d at page 492 and Apx. 3a).

The majority of the Court in holding that the principles of *Haynes* and *Davis, supra,* are applicable to the instant case was of the opinion that the difference in the factual situations in those cases is not decisive to the application of the principles to the facts in this case.

Judge Bryan in his dissent, speaking for himself and Chief Judge Haynsworth, recognized that none of the decisions referred to mechanically converted into involuntary declarations, those which were examined carefully at trial and found to be voluntary. He is of the opinion, as is your

Petitioner, that the cases cited were intended to announce that certain circumstances are significant factors tending to prove coercion or some other unfair influence. These circumstances are merely to be included in the totality of circumstances to be considered in deciding whether a confession was made voluntarily. (And, as set forth in your Petitioner's succeeding reason for granting the writ, there is a very real question as to whether the circumstances present herein apply to the totality of circumstances surrounding the making of the Respondent's statements, at the time that they were made, if this Court concludes that the statements were in fact involuntary on the facts in the record).

This then is the contention of your Petitioner. Clearly, the cases cited in the majority opinion of the Court of Appeals and those cited by the District Court in support of its conclusions have been expanded by those Courts beyond the scope of the factual situations which they were intended to encompass. Assuming that this Court's decision in *Haynes, supra,* sets forth the standards to be applied in determining the voluntariness of the Respondent's oral admissions and signed statement, it is respectfully submitted that the facts and circumstances revealed by the record in the instant case do not justify the judgment of either the District Court or the Court of Appeals based upon the standards of voluntariness enunciated in *Haynes* or *Davis.*

Because of the recent decision of this Court in *Johnson v. New Jersey,* 384, U.S. 719, 16 L. Ed. 2d 882, 86 S. Ct. 1772 (1966), the question is somewhat more limited than that before the Court of Appeals at the time that this case was argued. Due to the clear pronouncement that the principles of *Escobedo v. Illinois, supra,* are not applicable here, your Petitioner need only set forth his contentions regarding the applicability of the decisions of this Court cited by

the majority of the Court of Appeals. Your Petitioner's submission will set forth his belief that the principles in the cases relied upon are simply not applicable here.

In examining the facts of the instant case against the background of those in *Haynes,* your Petitioner readily concedes that the Respondent was not specifically advised of his right to remain silent, of his right to an attorney, or that any statement he made might be used against him. However, the testimony, as well as the statement, itself established that he was advised that ". . . No one is going to threaten you or make you any promises and anything you say must be of your own free will". Clearly, this can be construed to establish an understanding on the part of the Respondent that he had a right to remain silent. There was no showing that he was of below average intelligence and as he himself testified, he was nineteen years old at the time of his arrest, he had completed the eighth grade of school, he had a record of minor offenses, and had been in police custody on a prior occasion. Thus, the question is reduced to this, what effect, if any, did the failure to specifically advise the Respondent of his rights have on the admissions and confession when the uncontradicted evidence established that he did not request legal assistance at any time during his detention. Clearly, the alleged request, if in fact made, to call his family cannot be construed to amount to a request for the legal assistance that the cases contemplate.

Again, assuming for purposes of argument, that *Haynes, supra,* is applicable to the instant case, it is respectfully suggested that even by resolving every possible inference to be drawn from the evidence before the District Court in favor of the Respondent, this would not bring this case within its purview.

In *Haynes, supra,* the Petitioner's confession was taken on the day after his arrest, and on the evening of his arrest he made several specific requests to the police that he be permitted to call an attorney and to call his wife and each was refused. Early in the interrogation he asked that he be at least permitted to talk to the prosecutor before proceeding further. The police who took his statement did not deny the allegations of the Petitioner that he would be allowed to call his wife if he cooperated and gave a statement. He was not advised of his rights and he was held incommunicado in an effort by the police to obtain his signature on another statement. He was not able to call his wife until five or seven days after his arrest. Thus, on these facts, this Court found that the confession was given only after consistent denial of his request to call his wife and a promise that he could call her if he cooperated. This Court found that this, along with the threat of continued incommunicado detention produced a confession that was not the product of a free and unconstrained will.

Clearly, the facts in the instant case in comparison to those in *Haynes,* do not warrant a finding based on the principles of that case, that the Respondent's oral admissions and his signed statement were the product of a will overborne.

The facts in the case of *Davis v. North Carolina,* 384 U.S. 737, 16 L. Ed. 2d 895, 86 S. Ct. 1761 (1966) are also clearly distinguishable from those in the instant case. For this reason, your Petitioner respectfully submits that this Court's decision therein is likewise not applicable here. Davis, an impoverished Negro with a third or fourth grade education and an escapee from a state prison camp was convicted in North Carolina of rape-murder. At his trial, a written confession and testimony relating to an oral confession were offered in evidence. The record revealed that after he had

been taken into custody he was interrogated daily over a period of sixteen days. There was no indication that the police advised him of any of his rights until after he had confessed orally on the sixteenth day. In addition to this there was evidence relating to a description of his place of detention and the circumstances surrounding his confinement during this period; evidence of a notation on the arrest sheet that Davis was not to be permitted to see anyone or use the telephone; the testimony of a police captain that he could have issued that order; and a finding of fact by the District Court that from September 21st until October 6th, the date of his confession, Davis saw no one. From the above as well as other evidence in the record, this Court concluded that Davis' confessions were not made freely and voluntarily because his will was overborne by the sustained pressures upon him.

In reversing the judgment of the Court of Appeals, this Court stated:

> "The facts established on the record demonstrate that Davis went through a prolonged period in which substantial coercive influences were brought to bear upon him to extort the confessions that marked the culmination of police efforts. Evidence of extended interrogation in such a coercive atmosphere has often resulted in a finding of involuntariness by this Court. [*Citations omitted*]. We have never sustained the use of a confession obtained after such a lengthy period of detention and interrogation as was involved in this case. (16 L. Ed. 2d at page 904)."

In the instant case, the Respondent made his oral admissions, as noted by the dissenting opinion of Judge Bryan, after he had been at the police station only an hour and he was in custody not more than six hours for interrogation; and during this time no threats or promises were made to him and no force was used as set forth in the opinion of

the District Court. Certainly, these facts are in sharp contrast to those set forth in the above quoted portion of this Court's opinion in *Davis*.

Thus, from the foregoing, as well as the applicable portions of the record filed in this Court in support of the within Petition, it is readily apparent that the cases cited by the Court of Appeals, as well as the cases cited by this Court in support of its rulings in *Haynes*, and *Davis, supra*, do not support the judgment of the Court below. Upon comparing the facts in the instant case and those in the cases referred to, it is manifest that the Respondent has not been deprived of a constitutional right guaranteed to him by the Fourteenth Amendment.

On the basis of the above, your Petitioner believes that this Court, by granting the within Petition, could clarify the guidelines to be used in determining the specific factors to be considered in deciding upon the issue of voluntariness in cases to which *Escobedo, supra,* and *Miranda v. Arizona,* 384 U.S. 436, 16 L. Ed. 2d 694, 86 S. Ct. 1602 (1966) have no application. This belief will be elaborated upon in your Petitioner's next reason as to why the writ should be granted.

II.

THE DECISIONS OF THIS COURT RELIED UPON BY THE MAJORITY OPINION OF THE COURT OF APPEALS IN SUPPORT OF ITS JUDGMENT ENTERED IN THESE PROCEEDINGS DO NOT REQUIRE AN AUTOMATIC FINDING THAT THE EVIDENCE IN QUESTION WAS INADMISSIBLE AS YOUR PETITIONER BELIEVES THE OPINION SEEMS TO INDICATE.

Without conceding that the dissimilarity of the facts in the instant case with those in the cases cited does not remove it from the purview of this Court's rulings in those cases, your Petitioner advances the hereinafter set forth additional reasons why the writ should be granted.

Your Petitioner believes, and therefore respectfully submits, that the standards set forth in the cases cited by the majority in support of its opinion and judgment do not apply because the standards for determining voluntariness in those cases have been extended beyond those proclaimed to be such by the rulings of this Court governing such situations at the time that the evidence in question was obtained and subsequently admitted at the Respondent's trial. The Respondent's oral admissions and his signed statement are voluntary both in fact and in law now and were at the time that they were made approximately three years prior to this Court's decision in *Haynes v. Washington, supra,* and approximately six years prior to the decision in *Davis v. North Carolina, supra.*

In advancing this belief, your Petitioner is aware that voluntariness in fact has always been, and remains the standard and the determinative inquiry. Yet, due to the recent decisions of this Court, it was felt by the Courts below that the admissions and the signed statement were involuntary because certain facts existing therein were similar to those present in the factual situations of the cases cited. It is abundantly clear that other than the traditional standards referred to in *Miranda v. Arizona, supra,* were applied to invalidate the evidence in question. It must be conceded that the failure to advise the Defendant of his right to remain silent and his right to counsel and the failure to grant him permission to make a telephone call, if this occurred, are all facts to be considered in determining voluntariness, but they are facts which do not invalidate a confession *per se.* In the cases cited, these and many more elements contributed to the totality of the circumstances culminating in the decision reached by this Court in each case.

By conceding that the above facts are important in any consideration of voluntariness, your Petitioner does not believe that a Court is justified, or that the decisions require that the oral admissions and the signed statement made in the instant case must be judged by other than the standards required by the decisions of this Court for deciding such questions existing at the time that the evidence was obtained from the Respondent. As set forth by Judge Bryan in his dissenting opinion filed in the Court below; "The instant case *must* be measured for voluntariness in 'traditional terms' for it was concluded before *Miranda* and *Escobedo*". The facts present in this case contributing to the finding of the Courts below are those which prior to *Escobedo v. Illinois, supra,* and *Miranda v. Arizona, supra,* would not have contributed as significantly to a finding of involuntariness although those decisions are not applicable to the instant case. *Johnson v. New Jersey, supra.*

Even in view of this, more stringent standards were applied in determining the admissibility of the Respondent's statements than had been required by the decisions of this Court at the time that the damaging admissions were obtained. Indeed, Chief Judge Thomsen, in his opinion filed in the District Court admitted that in the Court's opinion new standards had to be applied in these cases when he referred to "the tests which must now be applied by the State Courts as well as by this Court (the District Court), . . ." (Apx. 23a). (Parentheses added). Indeed, by including *Escobedo v. Illinois, supra,* as one of its authorities for its opinion, the District Court was in effect, giving a retroactive application to the decision in that case later declared to be improper in *Johnson.* The majority of the Court of Appeals in affirming the judgment of the District Court stated that: "All that the District Court did was to apply

the 'increasingly meticulous' standards of voluntariness to Ledbetter's case." (Apx. 5a).

That the decisions of the Courts below were based upon the decisions of this Court rendered after the date that the Respondent's conviction became final is further emphasized in Judge Thomsen's opinion as to why an objection was not entered to the admission of the testimony relating to the admissions of the Respondent and the admission of the statement itself. Judge Thomsen in finding that the Respondent's counsel did not waive his right to the relief prayed in his Petition filed in the District Court was of the opinion that his trial counsel did not give as much attention to the preparation of this point as he would have given at the time of the habeas hearing in view of this Court's recent decisions. The Court of Appeals in affirming the District Court on the waiver question concluded that at the time of the Respondent's trial, there was no basis for an objection because it took place before this Court fashioned the standard by which the procurement of the admissions and confession were to be judged. On this point, the dissenters held that there was in fact no objection to be made because, at the time, the admissions and statement were in fact voluntary.

It is in this application of the decisions referred to that your Petitioner believes that error was committed. As aforementioned, voluntariness is the test and remains so and the cases cited along with the standards set forth therein do not render the admissions and the statement in question involuntary *per se*. These decisions are not in the words of Judge Bryan's dissent "imbued with an automatic retroactivity".

From the foregoing, it is manifest that the issue raised in the instant case relating to voluntariness should have been

resolved by applying the traditional standards proclaimed by this Court to be applicable to such questions at the time the evidence was obtained and not the standards subsequently found necessary to be included in the determination of voluntariness.

CONCLUSION

For the reasons set forth above, it is apparent that a decision by this Court to grant the writ of certiorari and to review this case would enable this Court to proclaim the guidelines to be used by the Courts in deciding the issue of voluntariness on facts similar to those presented herein; and further proclaim the limitation on the application of the standards to be applied in determining such issues in view of its decisions rendered after the date evidence such as that in question was obtained and after the convictions for which the evidence was used to obtain same have become final.

Therefore, this Petition for Writ of Certiorari should be granted.

Respectfully submitted,

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